

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1166 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the petitioner/ 3rd party is directed against the order, dated 16.03.2017, of the learned I Additional Special Judge for trial of SPE & ACB Cases-cum- V Additional Chief Judge, City Civil Courts, Hyderabad, passed in Cr.I.M.P.no.991 of 2016 in Cr.No.7/ ACB.NLG/ 2016.

2. I have heard the submissions of *Sri K. Lakshman*, learned counsel appearing for the petitioner, and of the learned Special Public Prosecutor appearing for the 1st respondent-State. The second respondent is the accused officer. I have perused the material record.

3. The petitioner/ 3rd party filed the aforesaid miscellaneous petition under Section 451 of the Code requesting to release to the petitioner, for interim custody, subject to any conditions, the cash of Rs.70,000/- seized by the ACB officials during the course of investigation. The said application was resisted by the prosecution. The trial Court, by the order impugned in this revision case, dismissed the petition of the petitioner. Therefore, the petitioner is before this Court.

4. The case of the petitioner and the submissions made on his behalf, are as follows:

The petitioner is the owner of the Innova vehicle bearing number AP 24 TA 7828 ('vehicle', for short). Having purchased the same, he has given it on hire, on a consolidated payment of Rs.24,000/- per month, for the period from 01.04.2016 to 31.03.2017, under an agreement, to the Deputy Commercial Tax Office, Nalgonda, for official use of the Deputy Commercial Tax Officer

(hereinafter, 'DCTO'). On 10.08.2016, while the DCTO was returning to his house on the said vehicle, the same was intercepted by the ACB officials and was detained and seized by the said officials. The petitioner was informed that the said officer-accused was arrested. The above said cash, which the petitioner borrowed and which belongs to him, was also seized, on the search of the said Innova vehicle, as the same was found in the back seat cover of the driver's seat. In fact, on 07th and 8th of August, 2016 an amount of Rs.80,000/- was arranged for the personal needs of the petitioner by the friend of the petitioner, Rudhavat Srinu, from his personal savings as well as his friends and relatives. The promissory notes evidencing the said transaction of borrowal are produced before the Court. Out of the said amount, Rs.10,000/- was paid on 09.08.2016 to a creditor of the petitioner at Nalgonda. The petitioner raised certain hand loans from his friends and relatives for his personal needs. He is under an obligation to repay the same. Since the said cash, which was seized and which belongs to the petitioner, is kept in the custody of the ACB, the petitioner is being put to financial burden and is unable to either use the money or repay the amounts payable to his creditors. Hence, the above said cash may be released to the petitioner. The petitioner is prepared to abide by any conditions that may be imposed by the Court. The trial Court dismissed the application of the petitioner only on the grounds that the investigation was in progress by then and that the above said cash cannot be released to the petitioner on his simple statement that he borrowed the cash from his friends. The investigation is completed. Therefore, the order impugned may be set aside and the interim custody of the vehicle may be granted to the petitioner in the interest of justice.

5. Learned Special Public Prosecutor while supporting the orders of the Court and submitted as follows: "In the trial Court a counter is filed stating that the investigating officer objects for the release of the cash to the petitioner. In the statements made to the ACB officials, during the course of

investigation, neither the accused officer nor the petitioner herein claimed the net cash of Rs.70,000/- found in the Innova car. Another Sanjeeva Naik also did not claim the said cash. The said cash was seized along with other documents found in the Innova car in the presence of mediators as is evident from the mediators' report. In the statement, the petitioner stated that the accused officer engaged the services of the petitioner as a computer operator on the request of his grand mother, who was employed in Vigilance office, and that since then he was being paid Rs.7,000/- per month and that the accused officer purchased the vehicle in his (petitioner's) name and then taken him as a driver and is paying a salary of Rs.10,000/- from officer's pocket. Since the petitioner is a name lender as per the statement made during investigation and as the vehicle was purchased benami or nominally in the name of the petitioner, and as ownership of the cash requires adjudication after full-fledged trial, the petitioner is not entitled to seek release/interim custody of the cash."

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. According to the case of the prosecution, while the DCTO was returning to his house on the subject vehicle, the same was intercepted by the ACB officials and was detained and seized by the said officials. It is also the case of the prosecution that on search of the said vehicle the above said cash was found in the back cover of the Driver's seat and that during the course of investigation, neither the petitioner nor did the accused officer nor Rudavath Sanjeeva Naik claimed the said net cash. Basing on the statement said to have been given by the petitioner and the investigation done, the prosecution contends that the vehicle was purchased by the accused officer in the name of the petitioner. Nevertheless, the petitioner claims that he is the owner of the vehicle and that he has given it on hire, on a consolidated payment of

Rs.24,000/- per month, for the period from 01.04.2016 to 31.03.2017, under an agreement, to the Deputy Commercial Tax Office, Nalgonda, for official use of the Deputy Commercial Tax Officer. The vehicular documents are of course are in the name of the petitioner. Admittedly, the vehicle was given on hire to the Commercial Tax Department and the petitioner is serving as a Driver on the said vehicle on payment of Rs.10,000/- by the accused officer. The vehicle was intercepted when the accused officer was returning to his house. The property in question is cash. It is true that the truthful nature of the two rival versions has to be adjudged after regular trial.

8. It is apt to note that the petitioner filed another petition in Crl.MP.No.992 of 2016 in the above crime before the trial Court for release of the vehicle. The said petition was dismissed by the trial Court. Aggrieved thereof, the petitioner filed Criminal Revision Case No.1165 of 2017. This Court, allowed the said revision, vide separate orders made in that case and released the vehicle and ordered for granting interim custody of the said vehicle to the petitioner, subject to certain conditions. The subject property in the present case is cash of Rs.70,000/- and is not a substantial amount. While releasing the same and granting interim custody, subject to conditions, there is no need to make a roving enquiry and record any findings which will have a bearing on the issues involved in the main case. Granting of interim custody of any property is always without prejudice to the contentions of both the parties and the interim custody does not confer any additional rights and such custody is always subject to the result of the final verdict in the case.

9. Accordingly, the Criminal Revision Case is allowed and the order, dated 16.03.2017, of the learned I Additional Special Judge for trial of SPE & ACB Cases-cum- V Additional Chief Judge, City Civil Courts, Hyderabad, passed in Crl.M.P.no.991 of 2016 in Cr.No.7/ ACB.NLG/ 2016 is set aside. The said learned Judge is directed to give interim custody of the cash, viz., Rs.70,000/- (with

interest thereon, by encashing the fixed deposit, if the said amount is already invested in a Fixed Deposit) to the petitioner on the petitioner furnishing a bank guarantee for Rs.70,000/- from a Nationalised Bank and undertaking to renew the same from time to time until further orders of the trial Court and on further undertaking to produce the said sum before the trial Court or a specified authority as and when directed by the trial Court.

Pending miscellaneous petitions, if any, in this Criminal Revision Case, shall stand closed.

M. SEETHARAMA MURTI, J

14th June 2017
Vjl

